



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-112 (Rule 112) Value of products and 458-20-134 (Rule 134) Commercial or industrial use.**

Date last adopted: **WAC 458-20-112 was last filed on May 29, 1970 and WAC 458-20-134 was last filed on September 23, 1986.**

Reviewer: **Cindy Evans**

Date review completed: **June 28, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

WAC 458-20-112 Value of products.

Rule 112 contains the principles set forth in RCW 82.04.450 (Value of products, how determined) by setting out how the value of products is determined, providing the definition for "gross proceeds of sales," setting out the deduction for transportation costs for business and occupation tax computation purposes on items that are shipped outside the state, and explaining how to determine the gross proceeds when a sale price is not indicative of the true value of the subject matter of the sale.

WAC 458-20-134 Commercial or industrial use.

Rule 134 defines the term "commercial or industrial use," giving illustrative examples. It explains how persons who manufacture or extract tangible personal property for their own commercial or industrial use are subject to both business and occupation and use tax on the value of the property used. In addition, the rule explains the two exemptions from use tax on articles produced for commercial or industrial use: (1) use of fuel by the extractor or manufacturer thereof and (2) property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium. Finally, the rule explains how the value of an article is determined when it is manufactured for the United States Department of Defense.

**2. Need:**

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

Rule 112 is needed because it provides instruction on valuing products and determining gross proceeds of sales. Rule 134 is necessary because it defines "commercial or industrial use" and explains the application of business and occupation and use tax on the value of products manufactured or extracted and then used by that manufacturer or extractor.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
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		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

There is one ancillary document that concerns Rule 112: ETA 417.12.144 (Printing Industry - Use Tax on Consumable Materials and Supplies). This ETA was previously reviewed with a recommendation that the info be incorporated into a revised Rule 144.

There is one ancillary document that concerns Rule 134: ETA 240.12.134 (Use and Manufacturing Tax on Production of Molds Used to Produce Finished Product). This document should be retained at this time. See the ancillary document review form of ETA 240.12.134.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **These rules are clear, well organized, and the numerous cites to other statutory authority are accurate.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?



Please explain. **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **No other governmental entities or state agencies have similar regulatory requirements.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **These are interpretive rules that impose no new or additional administrative burdens on businesses that are not imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **The statutes and rules affect all similarly situated taxpayers in the same fashion.**

9. LISTING OF DOCUMENTS REVIEWED: (Use "bullets" with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

WAC 458-20-112

- **RCW 82.04.070 "Gross proceeds of sales"**
- **RCW 82.04.450 Value of products, how determined.**



WAC 458-20-134

- **RCW 82.04.050(d) "Sale at retail, "retail sale"**
- **RCW 82.04.130 "Commercial or industrial use"**
- **RCW 82.12.010(1)(d) Definitions**
- **RCW 82.12.0263 Exemptions--Use of fuel by extractor or manufacturer thereof.**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 240.12.134 Use and Manufacturing Tax on Production of Molds Used to Produce Finished Product.** All tools and supplies, which are entirely consumed in manufacturing and repair activities, are taxable because they are not sold to customers.
- **ETA 417.12.144 (Revised) Printing Industry - Use Tax on Consumable Materials and Supplies.** The production of the intermediate consumable items by a printer are the result of professional and/or artistic type of services, thus, the measure of the use tax for these consumable items are the cost of materials.

Court Decisions:

***St. Regis Paper Co. v. State of Washington*, 63 Wn.2d 564, 388 P.2d 520 (1964).** The taxpayer manufactured plywood, lumber and other forest products in Washington, which it sold within and outside the state. In determining whether there has been a "prior sale" of manufactured products for the purposes of RCW 82.04.450(2), the moment when title, possession, or ownership transfers is immaterial in view of the definition of sale contained in RCW 82.04.040.

Board of Tax Appeals Decisions (BTAs):

***Longview Fibre Co. v. Department of Revenue*, BTA No. 12685 (1975).** The taxpayer, which manufactures paper, board, bags, and boxes, entered into a written agreement with another manufacturer of paper products to divert its excess wood chips with specified settlement prices for the various grades of chips, or at a price mutually agreed upon. The Board held that measure of the tax for B&O purposes is the amount agreed to pursuant to their written contract rather than the price the taxpayer paid its independent supplier.

***Florence Packing Co. v. State of Washington, Department of Revenue*, BTA No. 79-12 (1979).** The taxpayer was engaged in the business of slaughtering horses, breaking and processing perishable horsemeat products and selling the same at wholesale. The Board found that the B&O tax was correctly imposed on the taxpayer's activities with no deduction allowed for interstate and foreign sales at wholesale of these products. The Board held that the tax is on the wholly intrastate activity of slaughtering, breaking, and/or processing and it is immaterial that the products are destined for eventual export outside the state.

***American Artificial Limb Co., Inc. v. State of Washington, Department of Revenue*, BTA No. 88-1 (1989).** Taxpayer was a manufacturer and retailer of artificial limbs. The Board found that the plaster casts used in the manufacture of the limbs were not a component or an ingredient of the artificial limbs and, therefore, the measure of the value of the casts used by the taxpayer is based on the costs of materials, including direct and indirect overhead costs.



Administrative Decisions (e.g., WTDs):

WAC 458-20-112

- **Determination No. 87-17, 2 WTD 143 (1986)** - The value of products extracted is determined by the gross proceeds of sales, not the price paid for similar logs.
- **Determination No. 87-363, 4 WTD 331 (1987)** - The "value of the article used" for use tax purposes is determined as nearly as possible by the retail selling price of similar products. Where no retail selling price exists for a free sample product specially packaged as such, the value is to be determined by the total cost of production, plus the costs of special packaging, research and development, and distribution to arrive as nearly as possible to the retail selling price.
- **Determination No. 89-326, 8 WTD 39 (1989)** - "Value of products" will be based on the sales price when finally sold by a taxpayer. Internal pricing between a taxpayer's divisions or locations will therefore not be a basis for establishing a product's value for manufacturing tax purposes - only the final sales price to another person.
- **Determination No. 89-372, 8 WTD 115 (1989)** - A deduction, for B&O tax computation purposes, is allowed when transportation costs are actually incurred by seller through use of its own facilities and employees. There is no requirement that costs be paid to another entity.
- **Determination No. 89-490, 8 WTD 303 (1989)** - The value of products that are transported out-of-state without prior sales shall correspond as nearly as possible to the gross proceeds from other sales in this state.
- **Determination No. 89-551, 9 WTD 031 (1989)** - RCW 82.04.250 and Rule 112 do not limit a determination of the "value of products" solely to a comparison of similar commercial sales, but allows for other alternative methods.
- **Determination No. 91-264, 11 WTD 453 (1992)** - No amount should be added for profit when determining value under the cost basis.
- **Determination No. 91-330, 11 WTD 531 (1992)** - The measure of use tax on materials purchased for training programs is the full retail price paid for such program.
- **Determination No. 91-341, 12 WTD 327 (1991)** - Absent actual sales, prices listed by Platt's Oilgram or Oil Pricing Information Service will be relied on to determine the value of petroleum products under exchange agreements in the oil industry.
- **Determination No. 93-118, 13 WTD 262 (1994)** - Absent actual sales, prices listed by Platt's Oilgram or Oil Pricing Information Service will be relied on to determine the value of petroleum products under exchange agreements in the oil industry.
- **Determination No. 94-015, 14 WTD 180 (1995)** - Engineering drawings incorporated into the manufacture of circuit boards are materials or ingredients of the final product whose value is measured by the gross proceeds of the sale of the circuit boards and not by the cost basis of the engineering itself.

WACs 458-20-112 and 458-20-134

- **Determination No. 87-45, 2 WTD 219 (1986)** - A taxpayer which manufactures signs for its own use in its retail stores is liable for use tax on the "value of the articles so used." When it is not possible to determine the "gross proceeds from sales from other sales at comparable locations," the department may determine the "value of product" on a cost basis.



- **Determination No. 88-37, 5 WTD 107 (1988)** - The value of an article manufactured for commercial use is the total cost attributed to the article, at the time the manufacturing is completed.
- **Determination No. 89-546, 8 WTD 445 (1989)** - A county government which makes and uses printed materials is liable for use tax on the total value of such materials which value includes labor and overhead costs expended in the printing thereof.
- **Determination No. 92-032, 12 WTD 73 (1993)** - Measure of use tax on damaged or "off condition" bottles of wine is the retail selling price of the "off condition" bottles as opposed to the retail selling price of undamaged bottles of the same wine.

WAC 458-20-134

- **Determination No. 90-275, 10 WTD 71 (1990)** - Tooling made by a manufacturer who uses it to make airplane parts is subject to use and manufacturing B&O tax.
- **Determination No. 87-364, 4 WTD 351 (1987)** - To be considered manufacturing activities, there must be a clearly separate and distinct commercial or industrial use of the article to be subject to multiple tax liability.

Attorney General's Opinions (AGOs): **None found.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

_____ Amend

_____ Repeal

_____ **X** Leave as is

_____ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

_____ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

There is no need to revise these rules at this time.

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: